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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,005	11/19/2003	Krista Marie Wickens	13914.928	8754
22913	7590	12/15/2004	EXAMINER	
WORKMAN NYDEGGER (F/K/A WORKMAN NYDEGGER & SEELEY) 60 EAST SOUTH TEMPLE 1000 EAGLE GATE TOWER SALT LAKE CITY, UT 84111			AMERSON, LORI BAKER	
		ART UNIT	PAPER NUMBER	
		3764		
DATE MAILED: 12/15/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/718,005	WICKENS, KRISTA MARIE
	Examiner	Art Unit
	L. Amerson	3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 19 November 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-39 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 10 is objected to because of the following informalities: "ball" lacks antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 1-4, 8-9 are rejected under 35 U.S.C. 102(a) as being anticipated by Wren. As to claim 1, a device having a flexible bladder with a degree of curvature (30) and loose filler disposed within the bladder (18). Regarding the language, "partially stabilized", "for performing core body exercises", "the bladder being configured and arranged to support a user exercising thereon when said bladder is inflated" and "to stabilize the bladder with respect to a support surface, the filler being configured to move in the bladder when the bladder is moved" has not been given patentable weight because the limitations are purely functional in nature and do not recite any structure. As to claim 2, the filler is sand (fig. 3). As to claims 3-4, the language has not been given patentable weight because the limitations are purely functional in nature and do not recite any structure. As to claims 8-9, the bladder is spherical, oval ant egg shaped (figs. 1-2).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

a. Claims 5-7 and 11-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wren as applied to claim 1 above. Wren discloses all of the limitations of the claimed invention except for specific ratios between weight and volume, filler color and size, filler versus volume, dimension of diameter, and filler weight. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to modify the device of Wren by specifying the ratios, weight and dimensions as noted above because Applicant has not disclosed that the specific ratios, weight and dimensions provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with any ratio, weight and dimension that is capable of performing in the same capacity as the preference of the applicant. Therefore, it would have been an obvious matter of design choice to modify Wren to obtain the invention as specified in the claims.

b. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wren as applied to claim 1 above, and further in view of Jackson. Wren discloses all of the limitations of the claimed invention except a texturized

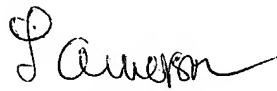
surface. Thus, Jackson teaches a texturized surface (col. 4, lines 45-50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Wren in view of the teaching of Jackson such that a texturized surface is capable of providing a non-slip grip for a user to hold.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to L Amerson. The examiner can normally be reached on Mon.-Fri from 8-5 p.m. Interviews Tue. and Thur..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor is Justine Yu.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



L. Amerson